G. R. S. IX-5]

Previous references.

Reserve

1915

~~192~~

(Cs)

File No. 230-18

Serial Nos 1,

Later references.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos.

Part B for July 1921

SUBJECT.

Proposal for the Constitution of Special Full Benches of the Chief Court.

WD 1888—GPB—16,926—23-7-21

Shulla Khan Staff
10.7.21

G. R. S. III—1] 1918.

GENERAL AND REVENUE SECRETARIAT.

(Courts)

NOTES.

File No. 230-18

FILE HEADING.

Proposal for the constitution of a special court in case of need out of a standing list of gentlemen who have held high Judicial Offices in the State

From

The Registrar chief court

No. C 1078 Dated 29-3-1918 Received 2-4-1918

Diary No. 1397	Enclos. 1	Spare Copies.	Serial No. 1

BRIEF ABSTRACT OF LETTER.

Forwards ~~a proposal~~ for consideration a proposal made by the chief Judge accepted by the other Judges of the chief court to facilitate the constitution of a special court in case of need.

NOTES AND ORDERS.

First members views on the Proposal ×

To be submitted early

(Initd) H. S. C

Submitted with file no. B 07 1884 relating to the chief court Regulation I of 1884

4/4 Abstract

5/4

NOTES—First Sheet.

General and Revenue Secretariat.

No File No. 230 of 191 8.

Serial No.

3) The Chief Court proposes the Constitution of a Special Court. Its main features are as follows:-

(1) To maintain a standing list of selected gentlemen who have served the State as Chief Ct. Judges, Distt. Judges, or Govt. Advocate, the selection being subject to the approval of His Highness.;

(2) To empower the Chief Judge, when necessary, to invite one or two of these to sit with the Judges of the Chief Court;

(3) To allow the Special Court thus constituted to exercise the functions of the Chief Court for the purposes of the particular case or cases;

(4) To remunerate the Special Judges by a fee for each case or preferably for each day's sitting.

4) This proposal has been made with two objects, viz: (i) to meet a special inconvenience which has actually arisen from the personal disqualification of some of the Judges for the disposal of certain cases; and (ii) to strengthen the authority of the Chief Court by providing for the satisfactory

NOTE—Contn. sheet.

G. R. S. III-2]

General and Revenue Secretariat.

~~230~~ File No. 230 of 191 8.

Serial No.

disposal of important cases requiring a greater choice in the selection of Judges than is possible under the present Regulation. The Registrar later explains these points in detail in paras 2, 3, 5 & 6.

5) The scheme proposed by the Chief Court has the some attractive features: —

(a) It proposes to utilise the services of retired men who have distinguished themselves in the Judge dept, & who are still capable of serving the State;

(b) It aims at to rectify a defect in the old Chief Court Regn;

(c) It is simple & inexpensive;

(d) It possesses the merit of avoiding the appointment of any add Judges at a heavy cost to the revenues of the State;

(e) It follows the system under which ex-Judges are appointed Privy Councillors in England;

(f) The ~~Scheme~~ scheme is original & does not seem to have been

NOTE—Contn. sheet.

WD A 1789—GPB—60,000—20-3-13—S.

Serial No.

Mayne of anywhere else in India to solve similar difficulties.

Submitted for orders

D. M.

Chief Secy. 6) There do not seem to be any objection to the adoption of the proposals made by the Chief Court.

I Member 7) The question may be considered in Council.

C&S 11/Feb/19

D. M. 11/2

1176/11.4.19.

1st member) 8) I have waited, before dealing with this case, for the publication of the April-May issue of the Mysore Ch: Ct: Reports for 1919 (Vol XXIV). It contains the full report of ~~the very important~~ the decision of the Full Bench on a very important point of Hindu Law; and incidentally an elaborate discussion by the Judges upon the conditions & circumstances pertaining to a reference to the Full Bench, and the power of the one Full Bench to revise the decision of previous Full Benches. I should invite

C&S put up

NOTE—Contra. sheet.

WD A 1789—GPB—60,000—20-3-19—S.

General and Revenue Secretariat. | C.S. File No. 2 30 of 1918.

Serial No.

particular reference to the discussion in Part II of my Judgment, pp. 153 to 162, which ~~touches upon~~ ~~[illegible]~~ to the contingencies referred to in paras 2 and 3 of the letter now under disposal.

9 The proposal made by the Chief Court is ~~[illegible]~~ one of great importance, and has much to recommend it. But before I deal with it in its details, I should like the matter to be first informally discussed in Council.

4/6/18

Dewan)

(10) C.S.J.
4/6/18

11) I think that the proposal though it may solve the present difficulty will not succeed as a permanent measure. In the first place, there will not be available a sufficient number of suitable persons or persons convenient to form the panel from which juries might be selected by the Court in any [illegible] district. At present there are only two Sessions

NOTE—Contn. sheet.

General and Revenue Secretariat. | File No. | of 191

Serial No.

Mem available for transfer in the proposed branch — Messrs W. V. Wanjugu & J. Parmanand Bhagat both of Nairobi have asked for the post of Accountant but neither person is considered suitable for transfer. Mr W. V. Wanjugu is a matriculated person and has passed the departmental examinations but he is not available for transfer. Mr J. Parmanand Bhagat is not available for transfer as he is in charge of the Mombasa Treasury and cannot be spared at present.

Mr

General and Revenue Secretariat. | File No. 1 of 191

Serial No.

Chief Justice or the Senior Puisne Judge and will notify all Criminal Sessions to be held in the Provinces, Magistrates and Police Officers and Jailers which are specially referred to in this Rule.

12) Lastly the Commissioner of Prisons, the Chief Court will supervise the Prisons Establishment. After retirement, it is not possible to have a detached life in the Prisons for Chief Courts & High Courts at present do not appear to be. They will have the full Magistrates Police and all the Police Officers in the Prisons & Jails. The Police & Jails will not have the same Magistrates as the Prisons & Police in the regular Courts & Jails.

14) The present depressed & poorly paid out by the Chief Court can be easily solved by the appt. of a temporary Judge —

Ltr
14/6.

15) I need this in the Commission to test the conclusion of a personal interview

NOTE—Contn. sheet.

General and Revenue Secretariat. | File No. of 191

Serial No.

Where appeals from the decisions of the Civil Courts under the Indian Limitation Act are heard in England on appeals when they come from the decisions of the High Courts in India, they become inoperative unless certain steps are taken within the time limited by the Code as regards the regulation of such appeals. The Representatives have been pressed for this privilege, which appears to them to be unreasonable, and they request that the Secretary of State will arrange that the decisions of the Civil Courts should not be final and persons should be allowed to appeal as in British India. The Constitution of the Tribunal might be as follows: (1) The number of the Judges and their pecuniary and status — Presidency (2) The purposes for which Civil Courts have not taken place in the decisions (3) The Legislative Council powers from Madras and Bombay to be appointed for the occasion.

(4) If a case needs the leave of appeal

Where the appeals from the Civil Courts there will be practically no decisions of Civil Courts in the Presidency towns of Madras and Bombay

NOTE—Contn. sheet.

Meeting
I m² - Official Record

"D" (2) b.

9 U.S.- ~~Subject.~~

Proposal to have a standing list of gentlemen who have held high Judicial Office in the State, and to empower the Chief Judge when necessity arises to form a special Court by inviting one or more of these gentlemen to sit with a Judge of the Chief Court.

Opinion of the Council.

5/6/19.

17) Informally discussed.
To be circulated

CSX

No. C.868

For disposal at a meeting.

9.6.1919

GENERAL AND REVENUE SECRETARIAT.

Council Matter.

SUBJECT.

(Clause xii of the Schedule)

Arrangements for constituting special Full Benches of the Chief Court.

CIRCULATED TO THE MEMBERS OF COUNCIL.

By Order,

C S Balasundaram
Chief Secretary to Government.

6th June 1919.

Extraordinary Member of Council. 13.6.19.

First Member of Council. Opinion recorded.

7772-186 9.6.19.

Second Member of Council. 10.6.19

5475 11.6.19.

Third Member of Council. GPB—1,000—28-8-14

15/6

C. 868

(4)

Subject.-Clause xii of the Schedule.

Arrangements for constituting special Full Benches of the Chief Court.

Opinion of the Council.

Note

1) Re cases referred to in para 5 & 6, D^o enquiry may be made as to how many cases there are & whether they have been heard &c -

2). General question may be further considered after consulting Judges of the Ch. Ct. informally.

CSJ
26/6/19

~~To the Assistant Secretary, Protection Branch, for a draft.~~

CS.
Draft adopt D^o.

CSJ
27/6/19

Draft approved ~~submitted~~ by Chief Sec^y 30/6/19 -

G. R. S. III-2.

C-868

General and Revenue Secretariat. | File No. | of 191

Serial No.

Reply rec^d from the Regr, Ch. Court, as well as letter ✱ 27 June 19, suggesting the appointment of a temporary judge of the Chief Court for a month from 10th July are submitted.

The matter may be considered in Council.

1st member
Dewan

CBS
3/7/19.

CBS
3.7.19

Laid

4.7.

Include in urgent list for next meeting

CBS
4/7-

Received for the Supplemental Agenda in the meeting of 15th inst.

125-125
5-7-19

SRSN

Recd
6.7.19.

51
7.7.19

Dewan
Judl
8/7

NOTE—Contn. sheet

C. No: 1078
1918-19

Chief Court of Mysore,
Bangalore, the 29th March 1919. 280-18

GEN. DEPT. Education 37 MAR 1919

From

G.SREENIVASA IYER, ESQUIRE, B.A., M.L.,
Registrar of the Chief Court of Mysore,
Bangalore.

64962

C.S. BALASUNDARAM IYER, ESQUIRE, B.A.,
Chief Secretary to the Government of Mysore,
Bangalore.

31.3-19

Sir,

I am directed to forward for the consideration of the Government a proposal made by the Chief Judge and accepted by the other Judges of the Chief Court to facilitate the constitution of a special court in case of need. The proposal is designed to meet a case, which has now actually arisen, of the personal disqualification of some of the Judges for the disposal of certain cases, as well as to strengthen the authority of the Court by making provision for the disposal of infrequently arising but important cases in which a greater choice of judges is desirable than is afforded by the present constitution of the Court.

2. The Court constituted of three Judges is generally speaking quite sufficient but there arise occasions on which it is found to be defective. It is now possible for a bench of two Judges to overrule another bench; though Judges will of course accept ordinarily the decisions of their predecessors, there arise occasions on which they think that a

decision

decision is wrong and should be overruled: if a bench of two Judges say A and B arrives at the conclusion that a former bench say X and Y should be overruled, they have nothing to do but to put the question before the Full Court under Section 15 of the Chief Court Regulation, and as they themselves must necessarily form the majority of theFull Court of those Judges, the reference is more or less a formality. And if the third Judge C differs from his colleagues A and B and accepts the decision of X and Y, the result is that two opinions overrule three, the decision of the majority of the Full Court being under Section 15 the decision of the Court.

3. Again the Full Court can under the Regulation overhaul and reconsider earlier decisions of a former Full Court. This may be a valuable jurisdiction but the result may be that a unanimous decision of the Full Court X+Y+Z may be overruled by the majority of the Full Court A+B, C dissenting, and two Vakils may in effect prevail over four.

4. These things do not happen often, and when problems of the kind arise the Judges do their best to deal with them in such a way as to uphold the dignity and authority of the Court, but they do occasionally present difficulties which it would be as well to remove if that can be done.

5. Another defect which has now actually come to light is this: the Court at present consists besides the Chief Judge of Justices Plumer and Doraswami Iyer of whom the former was District Judge of Bangalore and the latter Government Advocate. There are several cases now pending disposal which Plumer J. decided as District Judge and Doraswami Iyer J. argued ~~as counsel,~~ As Counsel in the District Court, and which therefore cannot be conveniently heard by either of them in appeal. Thus there is no court which can be constituted to hear them and it will be necessary in a month or two as soon as they are all ready for hearing to

ask

ask for the appointment by His Highness the Maharaja of a temporary Judge for a short time, a somewhat inconvenient necessity.

6. A similar difficulty has arisen in an appeal in a case in which a man has been convicted of murder by the Sessions Judge of Shimoga, the appellant gave evidence as an approver in the Sessions Court on the trial of some of his accomplices, and an appeal from their conviction was heard and decided by Mr. Chandrasekhara Aiyar and the Chief Judge, the conviction being sustained in the cases of two out of three appellants. The accomplice has it seems been found by the Sessions Judge to have forfeited his pardon, has been tried, convicted and sentenced for the murder, and has appealed to the Chief Court; the evidence against him being of course practically the same as that on the former trial, with the exception it may be of the absence of his own story. The Chief Judge having already formed an opinion in the former case, the appellant may take objection to his sitting to hear the appeal, and as it fell to Mr. Justice Doraswami Iyer to support the conviction in the former case as Government Advocate, there is a difficulty in forming a Court to which no objection can be taken.

7. These difficulties can, it may be, be overcome by the appointment of a temporary Judge under Section 4 of the Regulation, but it is obviously inconvenient to make such an appointment for a very short time, to hear one or two cases only, and the Chief Court have sought for an alternative remedy. To increase the numerical strength of the Court permanently by the addition of another Judge or Judges, would of course solve the whole problem, but the Judges believe that it would involve an unnecessary and not easily justified expenditure.

8. The business before the Chief Court is sufficient to occupy the three Judges but would not at present justify any increase

increase in their number: to provide the Court with more business would involve the transfer to it of some of the work done by the District and Subordinate Courts: it would be possible to call up to the Chief Court all or a large part of the appellate work of the State and leave the inferior courts entirely or mainly to original business. But the Judges doubt whether that would be really of advantage, and fear that it might in numerous cases in which the amount of money involved is not large, cause hardship to suitors, at any rate in the present state of communications in the State: and it might result in leaving some of the inferior courts underworked. At present it is thought that the number of Judges in the State is on the whole sufficient, leaving out of consideration the Munsiffs, and that to add a Judge to the Chief Court without subtracting one from some other court would be an extravagance which the Judges are not warranted in suggesting to the Government, and the Judges think that the present system of deciding the less important cases locally and leaving only the final appeals for decision in the Chief Court is probably best suited to the needs of the country in its present circumstances.

9. The scheme which is in these circumstances proposed is simple and inexpensive. It is to have a standing list of gentlemen who have held high judicial office in the State, and whose names have the approval of His Highness the Maharaja; and to empower the Chief Judge when necessity arises to form a special court by inviting one or more of these gentlemen to sit with a Judge of the Chief Court. The list would be revised from time to time, and would contain the names of selected gentlemen who have served His Highness as Judges of the Chief Court, District Judges or Government Advocates: the special Judges could be remunerated by a fee for each case or preferably for each day's sitting, and the special Court would be the Chief Court for the purposes of the particular case or cases. The

remuneration

remuneration should be based on the daily pay of a Judge of the Chief Court with some addition as compensation for occasional as opposed to regular work; possibly Rs.65 would be sufficient.

10. An analogy may be found in the system under which in England ex-Judges of Indian and Colonial Courts are appointed Privy Councillors, so that they may be called on when necessary to be members of the Judicial Committee for the decision of appeals to His Majesty.

11. The Judges of the Chief Court do not at present see any difficulty in preparing or maintaining a list containing quite as many names as are necessary: as a rule not more than one special judge would be wanted at a time, but on rare occasions a Court of five Judges might be found desirable to settle a knotty and important point, and then the services of two or possibly three special judges might be required.

12. If the suggestion be accepted, power to bring the scheme into force will have to be taken by enacting the necessary provisions in the Chief Court Regulation, and I am to enclose for the consideration of the Government a statement of the additions which seem to be required.

I have the honor to be,

Sir,

Your most obedient servant,

S Srinivasa Iyer

REGISTRAR.

SUGGESTED ADDITIONS TO THE CHIEF COURT REGULATION.

Section 15 (4). When a question is referred to a Full Bench under sub-section (2) or (3) of this section the Chief Judge shall appoint a Court of not less than three Judges to determine the question.

Power to constitute a Special Full Bench.

(5). The Court shall be composed ordinarily of Judges of the Chief Court but where in the opinion of the Chief Judge it is expedient to form a Special Court to determine the question referred he may appoint a Court of not less than three or more than seven Judges, of whom one or more shall be Judges of the Chief Court and the other or others shall be selected with his or their consent from the list prescribed in the next following section 15 A.

(6). The Court so formed shall be deemed to be a Full Bench of the Chief Court within the meaning of sub-sections (2) and (3) of this section.

(7). When the Chief Judge is a member of the Special Court he shall be the President of the Court: in other cases the President shall be the senior Judge of the Chief Court appointed under section 4 of this Regulation.

Section 15 A. (1). A list shall be maintained in the Chief Court containing the names of persons selected or approved by His Highness the Maharaja, who have been in His Highness' service as Judges of the Chief Court or District Judges, or have held the appointment of Government Advocate in Mysore.

(2). The names of all such persons shall remain on the list during His Highness' pleasure.

(3). A person selected from the list to be a judge of the Special Court shall receive such remuneration as may be from time to time prescribed by, or with the authority of, His Highness the Maharaja and shall have all the powers of a Judge of the Chief Court while and in so far as he is acting in the matter referred for the determination of the Special Court.

Section 15 B. (1). Where in consequence of the fact that one or more of the Judges of the Chief Court is unable by reason of personal interest in the subject matter or other like disqualification, to hear and determine any case or cases arising for disposal, it is found impossible to form a Bench of two Judges of the Chief Court for the determination of such case or cases, the Chief Judge may appoint a Bench for their determination composed of two Judges of whom one shall be a Judge of the Chief Court and the other a person selected with his consent from the list prescribed by section 15 A.

(2). The Court so formed shall be deemed to be a Bench of the Chief Court within the meaning of section 15, and the Judge selected from the list prescribed by section 15 A, shall receive remuneration as provided in sub-section (3) of that section and shall have all the powers of a Judge of the Chief Court while and in so far as he is acting in the case or cases for the disposal of which the Court has been formed.

Conf
Immediate

No. 1729/CB Dy 30-6-1919

Dear Sir,

With reference to your letter No. C 1078 dy 29.3.1919 conveying suggestions of the Judges of the Chief Court for Constituting certain proposals for Constituting Special Full Benches of the Chief Court, I am desired to enquire ~~from you~~ how many cases there are of the nature mentioned in paragraphs 5 & 6 of your letter and whether they have been posted for hearing, or if not when they are likely to be ready for hearing. The favour of a very early reply is requested.

Yours sincerely
CBz
30/6.

To. The Registrar, Chief Court.

Chief Court of Mysore,

Bangalore, 2nd July 1919.

Dear Sir,

With reference to your D.O. No.1729 C.B. dated 30th June 1919, enquiring how many cases there are of the nature mentioned in paragraphs 5 and 6 of my letter No.C. 1078 dated 29-3-1919, I am desired to invite attention to my letter R.O.C. No.1078 dated 26/27th June 1919. The case referred to in paragraph 6 has been disposed of as the accused waived his right to object: and there are ten appeals of the kind referred to in paragraph 5; six of them are ready, two will be ready in a week, and they are posted to the second week in this month.

Yours sincerely,

C. S. Balasundaram Iyer Esq., B.A.,

Chief Secretary to Government.